

REMARKS

In the Final Action dated November 20, 2009, Claims 1-26, 34-61 and 72 were pending. Claims 34-61 were withdrawn from consideration. Claims 1-26 and 72 were examined and rejected.

This Response addresses all outstanding rejections. Applicants therefore respectfully submit that the present application is in condition for allowance, or at least in a better condition for appeal. Therefore, favorable consideration of all pending claims and entry of the Response are respectfully requested.

35 U.S.C. § 112, First Paragraph

Claims 1, 8 and 18, and claims 2-7, 9-17 and 19-26 dependent thereon, are rejected under 35 U.S.C. §112, first paragraph as allegedly lacking descriptive support. This is a new matter rejection. The Examiner maintains that the specification does not support the claim limitation, "an amino acid sequence having at least 80% identity to SEQ ID NO: 2".

Claims 1-4, 8-21, 25-26 and 72 are rejected under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement as well as the enablement requirement. Essentially, the Examiner maintains that the specification does not contain adequate description of a representative number of species, and does not provide sufficient guidance for making the nucleic acid molecules, which fall within the broad genus as claimed by way of the sequence identity or hybridization language.

In an effort to advance prosecution and without acquiescing to the Examiner's rejections, Applicants have amended the claims to remove references to the sequence identity language and the hybridization language. Applicants respectfully submit that the claims, as

presently amended, are fully supported by the specification in a manner that satisfies the written description and enablement requirements. Withdrawal of the rejections under 35 U.S.C. §112, first paragraph is therefore respectfully requested.

35 U.S.C. §102(b), §103(a)

Claims 1-4 and 8-21 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by Lewis et al. and GenBank Accession No. AF191099. Claims 25-26 are also rejected under 35 U.S.C. §103(a) as allegedly obvious over Lewis et al. in view of Lee et al.

The claims have been amended based on the suggestions made by the Examiner including for example, by replacing the article "a" with "the". It is respectfully submitted that the claims, as presently amended, are not anticipated or rendered obvious by the cited references. Withdrawal of the rejections is respectfully requested.

Rejoinder

The withdrawn method claims, claims 34, 37-39, 42-43, 45 and 47-48, have been amended to include all the limitations of the product claims. Once the product claims are found allowable, Applicants should be entitled to a rejoinder of these withdrawn method claims.

Conclusion

In view of the foregoing amendments and remarks, it is firmly believed that the subject application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,



Xiaochun Zhu

Registration No. 56,311

Scully, Scott, Murphy & Presser, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
(516) 742-4343 (XZ:ab)